

Amendment/Reply

Applicant: Jerald A. Hammann

Serial No.: 09/840,332

Filing Date: April 23, 2001

Docket: H238,101.101

Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

REMARKS

The following remarks are made in response to the Non-Final Office Action mailed July 28, 2008. Claims 31-40 were rejected. With this Response, claims 31-35 have been amended. Claims 31-40 remain pending in the application and are presented for reconsideration and allowance.

Double Patenting Rejection

The Examiner provisionally rejected claims 31, 32, 33, 34, 35, and 36-40 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378.

The present application was filed on April 23, 2001 claiming priority to U.S. Provisional Patent Application 60/198,816, which was filed on April 21, 2000. The co-pending application Serial No. 09/999,378 was filed on October 31, 2001. Since the present application is the earlier filed application of these two pending applications, Applicant respectfully requests that if the below rejections are removed that the provisional double patenting rejection to claims 31-40 based claims 2, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378 be withdrawn per M.P.E.P § 804 and claims 31-40 be allowed.

Claim Rejections under 35 U.S.C. § 103

The Examiner rejected claims 31-40 under 35 U.S.C. § 103(a) as being unpatentable over the Hailpern et al. U.S. Patent No. 6,922,672.

The Hailpern et al. Patent does not teach or suggest the limitations of amended independent claims 31-35 of **accepting, via computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location and at least one of a service date and a service time.** The Examiner specifically cites the Hailpern et al. Patent at column 4, lines 28-32 which states "At step 320, it is checked if there are changes in the store conditions (such as available service capacity or inventory level) or objectives. Thus, for example, the inventory of a particular product may

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change. If the inventory or service capacity is high, then promotion may be desirable.” The Examiner also cites the Hailpern et al. Patent at column 3, lines 1-2 which states “A promotion may expire within a predetermined period of time.”

Applicant respectfully submits, however, that even though various references throughout the Hailpern et al. Patent disclose the geographic aspect of location, the geographic aspect taught in the Hailpern et al. Patent has necessary immediacy, because the Hailpern et al. system and method for providing target groups of customers with a plurality of promotions for a plurality of goods is in reference to “now.” As such, the Hailpern et al. Patent teaches away from a required date/time transaction parameter value as defined in the above-recited limitations of amended independent claims 31-35. Since the Hailpern et al. Patent disclosure always addresses contemporaneous promotions wherein the date and/or time parameter is inherently assumed by the user, it is unnecessary for the Hailpern et al. system and method to and it therefore does not communicate the required service date and/or time transaction parameter value recited in the above limitations of amended independent claims 31-35.

Furthermore, a promotion expiration date as disclosed in the Hailpern et al. Patent is not a service date/time as required by the above limitations of amended independent claims 31-35. The possibility of a promotion expiration is descriptive of the promotion selection routine step 325 and not of the change in store conditions/objective step 320. Therefore, the citation of the Hailpern et al. Patent referenced by the Examiner does not teach or suggest these limitations of amended independent claims 31-35.

The Hailpern et al. Patent also does not teach or suggest the limitations of amended independent claims 31-35 related to **wherein the at least one service date and service time is a date and/or time point or range measure indicating a present or future first date and/or time when the service is available.**

The Examiner asserts that “there is a timeframe from the moment the promotion is communicated to its expiration representing when the product/service is available.” However, the time-based expiration of a promotion has absolutely nothing to do with service availability as required by the above-recited limitations of amended independent claims 31-35. As disclosed in

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the Hailpern et al. Patent, the possibility of an expiration date is part of promotion selection routine step 325 rather than change in store conditions/objective step 320.

Furthermore, the Examiner's assertion is not correct, because service capacity may become fully booked as a result of the promotion even though the promotion has not reached its expiration time, and the same would be true for product availability in that the product might be entirely sold out.

The Hailpern et al. Patent does not teach or suggest the limitations of amended independent claims 31-35 related to **wherein the capacity of the at least one composite resource is a measure of on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time.**

Firstly, the Hailpern et al. Patent does not teach or suggest how to measure capacity as required by these recited limitations of amended independent claims 31-35. Since the Hailpern et al. Patent does not disclose any future time, other than an expiration time, the Hailpern et al. method and system cannot measure capacity. As disclosed in the Hailpern et al. Patent, the possibility of an expiration date is part of promotion selection routine step 325 rather than change in store conditions/objective step 320. As a threshold matter, were the Hailpern et al. Patent to teach or suggest how to measure capacity, such teaching or suggestion would necessarily be in relation to change in store conditions/objective step 320. The Hailpern et al. Patent teaches or suggests very little in relation to change in store conditions/objective step 320.

Secondly, the Hailpern et al. Patent does not teach or suggest how to measure an ability to produce as required by the above limitations of amended independent claims 31-35. Since the Hailpern et al. Patent does not teach or suggest any future time, other than an expiration time, the Hailpern et al. method and system cannot measure an ability to produce. The Examiner specifically cites the Hailpern et al. Patent at column 2, lines 35-45 wherein it discloses "purchasing products at comparatively low prices." Applicant respectfully submits, however,

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that the Examiner is improperly interchanging the meaning of the words, “capacity” and “supply”, related yet separate terms whose distinctions are well know to those skilled in the art. Examiner’s citation is an example of opportunistically acquiring new supply as a one-time event rather than of measuring any form of capacity. Moreover, even if the words could be used interchangeably and actually had the same meaning, the Examiner’s citation still does not teach or suggest actually how to measure capacity, but merely suggests acquiring new supply.

The Hailpern et al. Patent does not teach or suggest the limitations of amended independent claims 31-35 related to **wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period.**

The Hailpern et al. Patent does not teach or suggest how to measure demand as required by the above-recited limitations of amended independent claims 31-35. Since the Hailpern et al. Patent does not disclose any future time, other than an expiration time, the Hailpern et al. method or system cannot measure demand. However, even were the Hailpern et al. Patent to disclose any future time, it nonetheless does not teach or suggest how to measure demand.

Furthermore, amended independent claims 31-35 include the limitations of **wherein the at least one service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource, the at least one service provider resource is a human resource, and the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource.** These limitations further define and distinguish amended independent claims 31-35 from the Hailpern et al. Patent.

The Hailpern et al. Patent discloses identifying target groups of customers and pushing promotions to them based on the relationship of the characteristic of the target group to the relation of the characteristics of the goods sought to be promoted. This is in contrast to the invention of amended independent claims 31-35 which is further defined by the above

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limitations to assist service providers in managing disparities between capacity and demand at any present or future date/times, wherein the at least one service provider resource is a human resource, and the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource. Accordingly, the Hailpern et al. Patent does not teach or suggest these limitations of amended independent claims 31-35. The Examiner contends that the Hailpern et al. Patent teaches these limitations because “a business providing services inherently contains human resources providing services at some level; and the business contributes more than a nominal amount of time making available the at least one composite resource.” The Hailpern et al. Patent, however, relates primarily to products, not services, as is evidence by its claims and specification. Not being directed to services, the Examiner’s contention is inaccurate as the Hailpern et al. Patent expressly indicates that it treats human resources as “an upper bound on the additional customers [a store] can handle at anytime.” See Col 5 lines 30-31. In other words, in the Hailpern et al. system and method, the business may contribute more than a nominal amount of time making available all of the composite resources. For example, a business may have an upper bound of 500 composite resources (i.e., products) to 45 customers within the period of an hour using a single human resource. However, the human resource does not contribute more than a nominal amount of time making available any one composite resource. As such, amended independent claims 31-35 are distinguishable from the Hailpern et al. Patent because amended independent claims 31-35 are specifically defined to address services where a service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource.

Finally, amended independent claims 31-35 include the limitations of **accepting from at least one potential user of composite resources, via computer, at least one composite resource transaction parameter value other than the potential user’s geographic location and communicating to the at least one potential user of the at least one composite resource at least a portion of the transaction parameter values for at least one composite resource**

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related to the potential user's at least one transaction parameter value. These limitations further define and distinguish amended independent claims 31-35 from the Hailpern et al. Patent.

The Hailpern et al. Patent discloses a "push" marketing system which uses demographic data like customer age, customer spending patterns, customer gender, customer salary, customer residential address, etc. to identify target groups of customers and provide the target group with a promotion. See Col. 2 lines 28-36. This is in contrast to the "pull" invention of amended independent claims 31-35 which is further defined by the above limitations to assist potential users in identifying composite resources matching transaction parameter values they provide. Accordingly, the Hailpern et al. Patent does not teach or suggest these limitations of amended independent claims 31-35.

In view of the above, each of amended independent claims 31-35 includes limitations which are not taught or suggested by the Hailpern et al. Patent, alone or in combination with the other cited references. In addition, dependent claim 36 further defines patentably distinct amended independent claim 31; dependent claim 37 further defines patentably distinct amended independent claim 32; dependent claim 38 further defines patentably distinct amended independent claim 33; dependent claim 39 further defines patentably distinct amended independent claim 34; and dependent claim 40 further defines patentably distinct amended independent claim 35. Therefore, these dependent claims are also believed to be allowable.

In addition, the Hailpern et al. Patent does not teach or suggest the limitations of dependent claims 36-40 related to **wherein, when demand exceeds capacity for the at least one composite resource, the modifying includes decreasing demand for the at least one composite resource and/or increasing the capacity of the at least one composite resource.** By contrast, the Hailpern et al. Patent only discloses increasing demand. The Hailpern et al. method and system cannot decrease demand and cannot modify capacity in any way and thus cannot increase capacity. The Examiner specifically cites the Hailpern et al. Patent at column 2, lines 45-51 wherein it discloses that "encouragement . . . may not be desirable" for a product "for which their stock is very low." The Examiner indicates that this passage teaches decreasing the demand. This example, however, does not teach decreasing demand. Rather it teaches neither

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increasing nor decreasing demand, or in other words leaving base demand unchanged. Base demand is the demand existing before any aspect of the invention is used to modify demand.

Therefore, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 103 rejections to claims 31-40, and requests allowance of these claims.

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CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 31-40 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 31-40 are respectfully requested.

No fees are required under 37 C.F.R. 1.16(h)(i). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Patrick G. Billig at Telephone No. (612) 573-2003, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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